THE INITIATIVE AND REFERENDUM AMENDMENTS IN THE PROPOSED OHIO CONSTITUTION

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The Ohio Constitutional Convention, which finished its labors on June 7, 1912, has provided, among other things, for the submission to the voters of an amendment to the constitution establishing the initiative and referendum as a part of the fundamental law of the state. In the campaign of 1911 for the election of delegates to the constitutional convention, the chief issue was the initiative and referendum, and the result of the November election showed a clear majority in favor of the proposition. The victory seemed so decisive that one of the most prominent initiative and referendum men of the state declared at a public meeting that there would not be enough opposition in the convention to make an interesting fight. The writer, who had "fathered" a municipal initiative and referendum bill in the seventy-ninth general assembly, had had some unpleasant experiences with certain avowed initiative and referendum members, and was, therefore, not so much inclined to enthuse at the prospects in the constitutional convention as the gentleman who had expressed himself so confidently. Events proved the latter's confidence unwarranted.

When the convention organized I was made chairman of the initiative and referendum committee, and introduced in the convention the proposal upon the initiative and referendum. I was, therefore, in a position to learn very early in the session that, while there are many who avow themselves to be believers in the initiative and referendum, there are not so many who are enthusiastic about it. Finding it practically impossible to make any valid objection to the principle of the initiative and referendum, the opposition endeavored to make it difficult for the people to make use of the initiative and referendum if adopted.

I shall here briefly state the more important provisions of the proposal as originally drafted, also the chief feature of the amend-

ment as finally passed by the convention, and shall state as fairly as possible the arguments made for and against the change.

The proposal, as originally introduced, provided that if at any time, not less than ninety days prior to any regular election, a petition signed by eighty thousand electors proposing an amendment to the constitution, should be filed with the secretary of state, the proposed amendment must be submitted at the next regular election by the secretary of state to the electors for their approval or rejection. In like manner a petition signed by sixty thousand electors, proposing a law, if filed with the secretary of state not later than ninety days before any annual election, would require the submission of such proposed law at such election by the secretary of state to the electors for their approval or rejection.

The referendum section of the proposal provided, with certain exceptions to be noted later, that no law passed by the general assembly should go into effect until the expiration of ninety days after the final adjournment of the session of the general assembly which passed the same. If a petition signed by fifty thousand electors of the state were filed with the secretary of state within ninety days after the final adjournment of the session of the general assembly which passed any law, ordering that such law or any item, section or part of such law be submitted to the voters of the state for their approval or rejection, it then became the duty of the secretary of state to submit such law or item, section or part of such law to the electors of the state for their approval or rejection at the next annual election, and it would not go into effect unless approved by a majority of those voting on the same. The filing of a referendum petition against any item, section or part of any law would not, however, prevent or delay the remainder from going into effect.

According to the original proposal, certain acts would go into immediate effect, should the same receive a vote of three-fourths of all the members elected to each branch of the general assembly. These were acts providing for tax levies, appropriations for the current expenses of the state, and other emergency measures necessary for the immediate preservation of the public peace, health or safety. Nevertheless, a referendum petition might be filed upon any such emergency law in the same manner as upon other laws, but such law would remain in effect until the same had been voted upon, and, if it were then rejected by a majority of those voting

upon the same, it would cease to be law. The amendment as passed by the convention does not permit a referendum upon this class of laws.

The original draft provided that the initiative and referendum powers were reserved to the electors of each political subdivision of the state, to be exercised in the manner to be provided by law. As finally passed by the convention, the only political subdivisions specifically given these powers are municipalities.

The general provisions of the proposal, as originally presented by me to the convention for discussion, are practically identical with the general provisions of the amendment as finally adopted by the convention. We shall, therefore, postpone their consideration, and now discuss the material changes made by the convention as evidenced by the amendment finally adopted.

First of all, a majority of the convention determined to change from the plan requiring a "fixed" number of signatures to initiative and referendum petitions, the majority deciding that a percentage basis was proper and desirable. Several delegates, including the writer, earnestly advocated the fixed number plan as being the only sound one, and here, trivial as this difference may seem, was the first occasion for a violent controversy. We argued that, since the representative system of government proceeds upon the theory that the people are the principals and act through their representatives as agents, then, logically, the principals should be able to do at least all that their agents could do; that, approximately, each eight thousand electors are now entitled to one member in the general assembly, who can introduce bills, that is to say, can initiate legislation at his will. As the population of the state has increased the membership of the general assembly has increased, but the number of persons required to elect one member of the general assembly has not been increased. Why, therefore, should it be necessary to automatically increase the number of signatures necessary upon a petition to initiate legislation directly, since, regardless of the increase in population or number of voters, any member of the general assembly, as agent for the same number of electors as before the population increased, could by introducing a bill or bills, initiate legislation and occupy the time of all the other representatives of the people, discussing and voting upon the same.

The next change was to fix the percentage so as to increase

the number of signatures over that required by the proposal as introduced. At the last general election there were about one million two hundred thousand votes cast, and, as the amendment finally submitted requires ten per centum to propose an amendment to the constitution, this would mean one hundred and twenty thousand signatures, as compared with eighty thousand—the fixed number specified in the original proposal to submit proposed amendments to the constitution.

The amendment, as passed by the convention, does not provide at all for the direct form of the initiative as to laws, although the direct initiative is provided for constitutional amendments. By direct initiative we mean that form of initiative by which a law is proposed by a certain number of petitioners and is submitted directly to the voters. The amendment as adopted provides that when, at any time not less than ten days prior to the commencement of any session of the general assembly, there shall have been filed with the secretary of state a petition signed by three per centum of the electors, proposing a law (the full text of which is set forth in such petition), the secretary of state shall transmit the same to the general assembly as soon as it convenes. If the general assembly passes the law, either as petitioned for or in an amended form, it shall be subject to the referendum in the same manner as any other law passed by the general assembly. If the general assembly refuses to pass the proposed law as petitioned for, or if it passes the same in an amended form, or fails to take action upon the same within four months after receiving it, it shall be submitted by the secretary of state to the electors for their approval or rejection at the next regular or general election, if such submission shall be demanded by a supplementary petition signed by not less than three per centum of the electors in addition to and other than those signing the original petition; but such supplementary petition must be signed and filed with the secretary of state within ninety days after the proposed law shall have been rejected by the general assembly, or within ninety days after the expiration of four months from the time of its presentation to the general assembly, if no action shall have been taken thereon, or within ninety days after the law as passed in amended form by the general assembly shall have been filed by the governor in the office of the secretary of state. The proposed law shall be submitted in the form demanded by such supplementary petition, which form shall

be either as first petitioned for, or with any amendment or amendments which may have been incorporated therein by either branch or both branches of the general assembly. If such proposed law thus submitted is approved by a majority of the electors voting thereon, it shall become the law and shall go into effect in lieu of any amended form of said law which may have been passed by the general assembly; and such amended form of the proposed law passed by the general assembly shall not go into effect until and unless the law proposed by supplementary petition shall have been rejected by the electors.

The bitterest contest relating to the initiative and referendum waged upon the question as to whether or not we should adopt the direct or indirect form of initiative. The more radical members of the convention struggled determinedly for the direct form of initiative. The newer converts to the doctrine of the initiative and referendum, and those who had accepted the doctrine but were not enthusiastic about it, supported the indirect form of initiative. The advocates of the direct form of initiative insisted that, while they did not desire, as claimed by the opposition, to abolish the representative form of government, yet, nevertheless, when it becomes necessary for the people themselves to propose legislation by petition, they should not be under obligation to either impliedly or expressly implore their servants to give their masters, the sovereign people, what they, as representatives, had no right to withhold. The opposition answered that this argument was based largely upon the sentiment that it was contrary to the spirit of democracy. This is no doubt partly true, but we also urged several additional reasons against the so-called indirect form of initiative.

First of all, it would delay action by the people on a proposed law—in some cases as long as two and a half years. For example: Suppose that, at the conclusion of the next session of the general assembly (which generally adjourns about the first or fifteenth of April), a situation should arise which would cause the required number of electors to sign and file a petition proposing a law. Of course, this proposed law could not be submitted at the November election in 1913 because it had not first been presented to the legislature, nor could it be submitted at the November election in 1914, for the general assembly is not ordinarily in session in the even-numbered years. The proposed law would be presented, how-

ever, to the general assembly in session on the first Monday in January, 1915, and, if the general assembly failed to pass the same, or should pass it in an amended form, a supplementary petition of three per centum would require its submission at the November election in 1915. This, in certain cases, would be a very serious objection, but there are other objections.

One of the chief arguments advanced for the principle of direct legislation is the educational effect upon the electorate. It is certainly true that the discussion and consideration of a measure by the people would result in a very much more thorough understanding of the law thus submitted to them. This discussion and study of laws or proposed laws submitted to the people for their approval or rejection, naturally creates in men a greater respect for the law. In the first place, men take a certain pride in the fact that they had a direct influence in determining what the law as to that particular matter should be, and, even if they may have been in the minority, they will have a much greater respect for such a law, for the reason that they know that the real majority of the people have declared that to be their will or law. In other words, they know that public sentiment is for it, and there is no suspicion, on the part of the minority, of undue influence, as in the case where important legislation is passed by a legislative body. It has always been urged that this responsibility of the people, and the study and discussion necessary to the discharge of this responsibility, would give such an understanding of the reasons for the law and the justice of it, or what seems to the majority to be justice, that it would thus form the strongest bulwark against anarchy and appeal to passion, for few there are who are willing to rebel against what they know to be the will of the real majority of their neighbors.

The purpose of the indirect form of initiative, however, is to prevent, as far as possible, the submission of proposed measures to the people for their approval or rejection, so that the advocates of this plan are compelled practically to abandon what has always seemed to the writer to be the strongest argument in favor of direct legislation, viz., the educational advantage. We have heard it very logically argued that the only way to learn an art is to practice it; that no one could learn to swim, for example, by having someone else swim for him, and certainly it is true that, in order to learn the art of government, the people must have practice. By this

we do not mean to argue that all laws should be submitted to the people for final approval or rejection, but it is desirable that laws bearing upon great questions of principle should be submitted directly to the voters. In no other way can certain questions ever be settled satisfactorily. The liquor question, for example, is a constant bugaboo to the legislatures of this state, and the will of the real majority of the people has never been expressed upon this question. Members of the general assembly invariably are dominated by either one organization or another, while the public generally always feels that the best judgment of the whole people is not expressed in the form of law. So it is with the question of taxation. The rural delegation in the constitutional convention were almost unanimously for what is known as the uniform rule of taxation, while the urban members generally were for the classification of property for taxation. The discussion of this question resulted in vituperation rather than argument.

The advocates of the indirect form of initiative offered as practically their only argument, the fact that the legislature would be given an opportunity to put the proposed measure in more perfect form. Our answer to this argument was, first, that ninety-nine per centum of the amendments offered to any bill as introduced in the general assembly, were not as to form but to substance, so that the real object of the indirect initiative is to give the legislature an opportunity to materially change the measure. It is reasonable to suppose, also, that persons expending from three to six thousand dollars for the circulation of a petition would, before incurring such expense, procure expert advice upon the subject, and take every other means of satisfying themselves as to the correctness of the form of the measure. Then again, if the members of the legislature are really so much concerned about the proposed law, they could offer their assistance to the framers in bringing the same into proper shape.

But, said the opponents of the direct form of the initiative, the people are required to vote either upon the proposition presented by a certain petition or vote against it. In answer to this we call attention to the fact that other citizens, procuring the required number of signatures, could submit to the voters at the same election, a different measure upon the same subject, so that it is not necessary to vote for or against the one proposition, provided that the objectors are really in earnest about the matter.

Another feature of the amendment as passed by the convention, is that one-half of the counties of the state must furnish the signatures of not less than one-half of the designated percentage of electors of such county upon all initiative and referendum petitions. This provision was also strongly combatted by the more radical initiative and referendum men of the convention. The argument of the supporters of this provision was that without it a few of the big cities could require the submission of proposed laws or amendments to the constitution to the vote of the whole state, to the disadvantage of the rural districts. One of the answers made to this argument was that in making this requirement the rural counties were putting themselves in a position where it would be almost impossible for them to avail themselves of the initiative and referendum. The writer's objection to this provision was that it partially destroys the influence of citizens in large municipalities, in that the signature of a citizen in a large city would have only a fractional value in its relation to the total required number of signatures upon any petition. If the state be the unit for the enactment of laws, then the signature of each citizen should be as effective in making the law as that of any other. It is not required that the County of Cuyahoga, for instance (the largest in the state), should be required to have the names of more than one of its members of the general assembly upon a bill before it would be entitled to consideration by the whole body, yet this provision of the initiative and referendum makes it necessary for a greater proportion of the citizens of the county to sign a petition in order to initiate legislation or demand a referendum. Assuming the soundness of the principle of popular self-government, the opponents of the plan for the distribution of signatures over certain portions of the state are absolutely correct in their contention.

There is no state which has a form of initiative exactly like that adopted by the Ohio Constitutional Convention. The State of California adopted the alternative plan of having both the indirect and direct, requiring a somewhat higher percentage of signatures for the direct than the indirect. The Ohio Constitutional Convention had, on second reading, adopted the California plan of indirect initiative, which provides for the submission of a proposed law to the legislature by petition. The legislature may, under that plan, either pass, reject, or pass the measure in an amended form. If the measure should be passed in an amended form, then the original measure peti-

tioned for, together with the one passed by the legislature, is submitted to a vote of the electors. If the legislature passes no form of the proposed measure, then it must be submitted to the electors as petitioned for. The difficulty with this plan, in the opinion of the convention, is the confusion that would necessarily result from the form of the ballot. Almost invariably it would be necessary to have a ballot permitting an affirmative and negative vote, both on the measure petitioned for and on the one submitted by the legislature, and the result would be that a great many voters in favor of one or the other proposition would vote only for one, while those against the principle would vote against both, thus giving the negative a very decided advantage. The convention, therefore, abandoned the plan on final reading of the proposal, and adopted the form above explained.

The indirect form of initiative adopted by the State of California provides that if the measure submitted to the legislature be passed in any form other than that proposed by the initiative petition, then both the measure in the form passed by the legislature and the measure in the form proposed by initiative petition or, what is denominated in the language of that constitution "Completing measures" shall be submitted to a vote of the people. In such case the ballots must be so printed as to permit an affirmative or negative vote on both forms of the measure. If either measure receives an affirmative majority of the votes cast thereon it shall become the law, provided however, that if both receive an affirmative number of the votes cast thereon then the one receiving the higher number of affirmative votes shall become the law.

The Maine form of initiative is practically identical with that of California. There is, however, this difference. According to the constitution of Maine, when there are competing bills or measures submitted to the people and neither receives an affirmative majority of the votes cast for or against both, the one receiving the greater number of affirmative votes, must at the next general election, held not less than sixty days after the first vote thereon, be submitted to the electors, by itself, if it receives more than one-third of the votes given for and against both of the competing measures at the first election held thereon. It has already been explained that the indirect form of initiative adopted by the Ohio Constitutional Convention provides that in case of the passage of an amended form of the measure

proposed by initiative petition, then the measure as originally proposed by the initiative petition or with any amendment incorporated by either branch of the legislature is submitted to the vote of the electors if demanded by a supplementary petition signed by three per cent of the electors in addition to and other than those signing the original initiative petition and if it receives an affirmative majority of the votes cast thereon it becomes the law and the amended form passed by the legislature becomes void.

One peculiar provision of the Ohio amendment is that the "initiative and referendum shall not be used to pass a law authorizing any classification of property for the purpose of levying different rates of taxation thereon, or of authorizing the levy of any single tax on land or land values or land sites, at a higher rate or by a different rule than is or may be applied to improvements thereon or to personal property." No other state has such a provision as this in its constitution. It is so ridiculous that it is not necessary to make any argument to show that fact.

The section containing the general provisions is very clear and comprehensive. Initiative or referendum petitions may be filed in parts, but each part must contain a full and correct copy of the title and text of the measure which is to be submitted. Each signer must be an elector of the state and must place after his name his place of residence and date of signing. The names of all signers must be written in ink by the person himself. An affidavit of the person soliciting signatures to any part of a petition must be attached to such part, and such affidavit must contain a statement of the number of signers of such part, and must state that the signatures were made in the presence of the affiant; that, to the best of affiant's knowledge, each signature is genuine, and that the persons who have signed are electors and signed the petition with full knowledge of the contents on the date set opposite the signer's name. A true copy of all laws or proposed laws or amendments to the constitution, together with an argument for and against the same, must be prepared, and must be mailed or otherwise distributed as far as reasonably possible, to each of the electors of the state. The persons who prepare the argument for any law or part of law submitted to the electors by referendum petition, or against any law submitted by supplementary initiative petition, shall be named by the general assembly, if in session, and, if not in session, then by the governor. The persons who

prepare the argument against any law or part of a law submitted to the electors by referendum petition, or for any proposed law, or proposed constitutional amendment submitted by initiative petition, may be named in such referendum or initiative petitions. The arguments in all cases are limited to three hundred words. The secretary of state is required to place upon the ballot the title of any law or proposed law or proposed amendment to the constitution submitted to the voters, and the ballots must be so printed as to permit an affirmative and negative vote upon each law or proposed law or proposed amendment to the constitution submitted to the vote of the electors. The basis upon which the number of petitioners shall be computed shall be the total number of votes cast for the office of governor at the preceding election therefor.

A valuable provision of the amendment is that the petitions and signatures upon all petitions mentioned in the amendment shall be presumed to be in all respects sufficient, unless, not later than forty days before the election, it shall be otherwise proved, and, in such cases, ten additional days shall be allowed for the filing of additional signatures to the petition in question.

Another provision which the writer believes to be extremely desirable, and which is contained in no other amendment, is that no law or amendment to the constitution, submitted to the electors by initiative or supplementary petition, and which receives an affirmative majority of the votes cast thereon, shall be held unconstitutional or void on account of the unsufficiency of the petitions by which such submission was procured, nor that the rejection of any law submitted by referendum petition shall be held invalid for such insufficiency.

Speaking generally, I believe the Ohio amendment relating to the initiative and referendum to be one of the best in the United States, although I feel that it would have been much better to have adopted the direct form of initiative rather than the indirect. It is gratifying to many of the veteran advocates of the initiative and referendum to know that one of the measures which legislatures have constantly refused to enact, and the need of which perhaps had a great deal to do with the agitation for the initiative and referendum, has been passed by the constitutional convention. This is the municipal home rule amendment. It is true that the legislature had not the power to give the cities as wide a scope of home rule as is provided

by the constitutional amendment just submitted by the convention, but, nevertheless, the general assembly always had it in its power to grant a great deal of relief in that direction.

The deliberations of the convention also converted a number of men who had hitherto violently opposed the initiative and referendum, among these some of the most ardent advocates of the reform known in Ohio as "classification of property for taxation." Some of these taxation reformers have seen the futility of any attempt to procure the desired end in any legislative body where necessarily there are so many conflicting interests which prevent the enactment of such legislation.